IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Criminal Appeal No. 461 of 2000

Date of Decision: 3rd October, 2007

State of H.P.	Appellant
Versus	
Amarjeet Singh	Respondent

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? No.

For the appellant: Mr.Ashok Chaudhary, Addl. Advocate General.

For the respondent: Mr.R.K.Bawa, Sr. Advocate, with
Mr.Inerjeet Singh, Advocate.

Sanjay Karol, J. (Oral)

The present appeal arises out of judgment dated 3rd May, 2000 passed by Sessions Judge, Kinnaur, HP in Criminal appeal No. 4 of 1999, titled as Amarjeet Singh vs. State, reversing the judgment passed by Sub Divisional Judicial Magistrate, Rampur Bushahr in Case No. 11-2 of 1997, titled as State of HP vs. Amarjeet Singh.

Before the Sub Divisional Judicial Magistrate, accused was charged for an offence under Section 279, 337, IPC. He was convicted of an offence under Section 279, IPC and sentenced to undergo simple imprisonment for 3 months and pay a fine of Rs.1000/-. In an appeal filed by the accused, the first Appellate Court set aside the conviction and sentence and acquitted the accused of an offence under Section 279, IPC.

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

Statement of Sh. Hira Singh (PW-1), under Section 154 Cr.P.C. (PW-1/A) was recorded by the official Incharge at Police Station Rampur Bushahr to the effect that his tractor was hit on the back side by the accused while rashly and negligently driving vehicle bearing No. CH-01-J-1649. Thus damaging his vehicle and also causing injury to him. Based on the same FIR (Ext.PW-7/A) was registered against the accused at Police Station, Rampur Bushahr, under Sections 279, 337, IPC.

During investigation, PW-1 was got medically examined and both the vehicles were got mechanically examined. The investigation was completed by SI Daulat Ram (PW-8) and the challan was presented in the Court for trail.

After complying with the provisions of Section 207, Cr.P.C. the accused was charged for an offence under Sections 279, 337, IPC to which he did not plead guilty and claimed trial.

In all, prosecution examined eight witnesses and after examining the evidence on record, the first Appellate Court acquitted the accused of the charged offence.

Appreciation of statement of Hira Singh (PW-1), the sole eye witness is relevant for proving the guilt of the accused for an offence under Section 279, IPC. The remaining witnesses, namely, Prem Dass (PW-2), LHC Tek Chand (PW-3), Yoginder Sharma (PW-4), Shyam Sunder (PW-5), Narinder Mahajan (PW-6), Devi Singh (Pw-7) and SI Daulat Ram (PW-8) are not eye witnesses.

I have perused the statement of witnesses and from the statement of PW-1 it is clear that tractor being driven by PW-1 was not mechanically fit prior to 28.11.1996 and the engine of the said tractor was seized. From the site plan (Ext.PW-8/B) as also the photographs

(Ext.PW-3/A and Ext.PW-3/B) on record one thing is clear that road is quite wide and the front portion of the truck had safely crossed the tractor.

The Court below has returned the following findings:

"Since the front portion of the truck had safely crossed the tractor, possibility of the accident having taken place as a result of the act of PW-1 could not at all be ruled out. If PW-1 had slightly turned the tractor towards extreme left, the rear portion of the truck was bound to go towards right thus coming in impact with the truck coming from the opposite direction. There was nothing to suggest that PW-1 had been in possession of a valid and effective driving licence to drive the medium goods vehicles. The police had not taken into possession the documents of the tractor. It was the very case of the PW-1 Sh Hira Singh, complainant that the tractor had not been mechanically fit prior to 28.11.1996. It was stated that the engine of the tractor had seized. In such circumstances, the possibility of the tractor striking against the truck coming from the opposite direction due to the mechanical fault also could not be ruled out.

"If the accused person had been driving rashly, he would not have been able to stop the truck at the very site of the accident. The solitary statement of PW-1 in view of the peculiar facts and circumstances of the case could not at all be upheld. The accused person was sought to be convicted on the strength of evidence of PW-1 alone. No other witness had started that the accused person had been driving the truck rashly or negligently. No other witness had seen the accused person driving the truck rashly and negligently prior to the accident. In the peculiar facts and circumstances of the case, the solitary statement of PW-1 could not be upheld."

I agree with the same.

It has come on record that driving license of PW-1 was not taken into possession by the investigating officer. Why the same was not taken into possession is not borne out from the record. The photographs and the site plan indicate that the accused had stopped the vehicle and there were no skid marks at the site of incident. The accused was present all along and in fact as per the version of PW-1 he had helped him to come out of the tractor. It has also come on record that the stones were stacked on one side of the road from which it cannot be ruled out that after striking with the same the tractor may have tilted on one side thus colliding with the vehicle being driven by the accused. It has come on record that rear side of the tractor had been hit by the vehicle being driven by the accused.

The accused has had the advantage of being acquitted by the first appellate Court. In my view, the first appellate Court has correctly arrived at his conclusion. I see no reason to interfere with the judgment of acquittal as the prosecution, in my view, has failed to prove its case beyond reasonable doubt. The appeal is accordingly dismissed. Bail bonds are discharged.

3rd October, 2007
(C)

(Sanjay Karol),
Judge